

# SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Chavez Analyst: Jeff Garnier Bill Number: AB 1338

Related Bills: See Prior Analysis Telephone: 845-5322 Amended Date: 6/17 & 7/2, 2004

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Withholding on California Real Estate/ Sale of Personal Residence Withholding

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

X AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended \_\_\_\_\_.

X FURTHER AMENDMENTS NECESSARY.

X DEPARTMENT POSITION CHANGED TO NO POSITION.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED

X June 26, 2003 STILL APPLIES.

OTHER - See comments below.

## SUMMARY

This bill would:

- Revise the withholding provisions affecting certain corporations to match that of individuals.
- Provide alternatives for how the real estate escrow person (REEP) submits withheld funds to the department.
- Clarify that persons transferring real property in foreclosure or in lieu of foreclosure would not be subject to withholding.
- Authorize the department to prescribe forms and instructions for the efficient administration of the withholding law, including de minimus thresholds.

## SUMMARY OF AMENDMENTS

The June 17, 2004, amendments:

- Removed the provision allowing the seller to elect to have 9.3% of the taxable gain on the sale of the real property withheld instead of the 3<sup>1/3</sup>% of the sales price under present law.
- Removed the requirement for the REEP to withhold from the seller, even if the REEP does not inform the buyer of the withholding requirements.
- Removed the provision that would have required the Franchise Tax Board (FTB) to develop a computer fillable withholding form that could be filed electronically.
- Removed a provision that required the taxable gain on the sale of a principal residence to be subject to withholding. All of the sale proceeds from the sale of a principal residence would be exempted from withholding.

Board Position:

<u>      </u> S	<u>      </u> NA	<u>  X  </u> NP
<u>      </u> SA	<u>      </u> O	<u>      </u> NAR
<u>      </u> N	<u>      </u> OUA	<u>      </u> PENDING

Legislative Director

Date

Jana Howard for Brian Putler 7/19/04

- Added a provision that would allow a REEP, at the REEP's option, to submit to the FTB withheld funds on individual transactions by the 20<sup>th</sup> day following the month that escrow closed.
- Removed a provision that granted the department authority to prescribe forms, instructions, notices, or regulations necessary for the efficient administration of the withholding law, including de minimus thresholds.

The July 2, 2004, amendments:

- Removed the provision that would have broadened the principal residence withholding exemption.
- Removed the provision that would have exempted from withholding the sale of real property sold by licensed general contractors
- Removed the provision that would have provided the maximum withholding amount of 3<sup>1/3</sup>% of the actual cash received by the seller in a failed like-kind exchange.
- Added back the provision that granted the department authority to prescribe forms, instructions, notices, or regulations necessary for the efficient administration of the withholding law, including de minimus thresholds.

The remainder of the analysis of the bill as amended on June 12, 2003, still applies. The THIS BILL section is presented in this analysis in its entirety.

## **PURPOSE OF THE BILL**

The author's staff has indicated that the purpose of the bill is to make the law regarding real estate withholding easier to comply with for the withholding agents.

## **SUMMARY OF SUGGESTED AMENDMENTS**

Department staff is available to assist with amendments to resolve the technical concern discussed in this analysis.

### **THIS BILL**

This bill would:

- Revise the withholding requirements on corporations with no permanent place of business in California to match the requirements for individuals. This eliminates the corporation waiver process and replaces it with the same statutory scheme in present law for self-certification by individuals.
- Clarify expressly that transfers of real property will not be subject to withholding if they are contributions to capital of controlled corporations and partnerships, or other sales that do not result in a net recognized gain.
- Add a provision that would allow a REEP, at the REEP's option, to submit to the FTB withheld funds on individual transactions by the 20<sup>th</sup> day following the month that escrow closed.
- Add a provision that would grant the department authority to prescribe forms, instructions, notices, or regulations necessary for the efficient administration of the withholding law, including de minimus thresholds.

### IMPLEMENTATION CONSIDERATION

This bill was first introduced in 2003 and was effective for transactions beginning on or after January 1, 2004. Because the bill failed passage last year, in Section 3 of the bill the year "2004" needs to be changed to "2005" in two places and the year "2003" needs to be changed to "2004" in one place. If these changes are not made the department may be required to refund some of the previously-paid withholding, regardless of whether additional tax is later due.

### TECHNICAL CONSIDERATION

The June 17, 2004, amendments removed the election to have the maximum tax rate (presently 9.3% for individuals and trusts and 8.84% for corporations) of the gain withheld instead of  $3\frac{1}{3}\%$  of the sales price. References to the election in other provisions of the bill were not removed in three places.

### **ECONOMIC IMPACT**

The revenue impact of this bill is estimated to be zero.

### **LEGISLATIVE STAFF CONTACT**

Jeff Garnier  
Franchise Tax Board  
845-5322  
[jeff.garnier@ftb.ca.gov](mailto:jeff.garnier@ftb.ca.gov)

Brian Putler  
Franchise Tax Board  
845-6333  
[brian.putler@ftb.ca.gov](mailto:brian.putler@ftb.ca.gov)